THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 22506 OF 2006

Date: 20.11.2006

Between:

The Government of A.P. rep., by its Secretary to Govt. M.A & U.D. Dept, Secretariat and another.

…. Petitioners

Sri J. Narsing Rao, Engineer, Hyderabad.

…

Respondent.

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO. 22506 OF 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order of the Tribunal dated 10.10.2006 in making the interim order, passed by it earlier on 2.09.2005, absolute the present writ petition is filed.

The Tribunal rejected the submission made on behalf of the government that, since the seniority list dated 01.03.2005 had been suspended by the Tribunal in another batch of O.As, the earlier 1997 seniority list had come into force. The Tribunal held that the subsequent seniority list, published in proceedings dated 06.08.2002, modified by the government in proceedings dated 22.07.2003 and communicated vide Engineer-in-Chief proceedings dated 28.02.2003, would operate and not the earlier seniority list dated 11.03.1997.

After noting that the respondent-applicant was to retire from service within a period of one and half years and the statement made on behalf of the government that the seniority list dated 01.03.2005 had been suspended and that there was no seniority list existing to effect promotions, and as exigencies of administration required promotions to be made, directed the petitioners herein to follow the seniority list published vide

proceedings dated 06.08.2002 as modified in proceedings dated 28.08.2003 and taking that seniority list into account to review the promotion of the respondent-applicant pending disposal of the other batch of O.As. The Tribunal held that, in view of the above circumstances, there was no hindrance for implementing the interim direction in accordance with the seniority list dated 28.08.2003 and therefore the interim orders were made absolute.

Learned Government Pleader would submit that, subsequent to the said order of the Tribunal, the batch of O.As in which the seniority list dated 01.03.2005 was questioned, was disposed of by the Tribunal in O.A. No. 1242 of 2004 and batch dated 09.11.2006. According to the learned Government Pleader, in view of the batch of O.As being disposed of, the seniority list dated 01.03.2005 is now in force and as such neither the earlier seniority list dated 11.03.1997 nor the seniority list dated 06.08.2002 as modified by proceedings dated 28.08.2003 would remain in operation.

Dr. K. Lakshminarasimha, learned Counsel for the respondent-applicant, would seek to make submissions on merits and canvass several other grounds urged before the Tribunal. Learned Counsel would submit that in view of the order of the Division bench, wherein the petitioners herein were directed to implement their memo dated 28.08.2003, having attained finality, the petitioners herein were bound to comply with the orders of the Division bench and the order of the Tribunal was only a consequence of the earlier order of the Division bench.

It is necessary to note that none of the contentions now urged before us by Dr. K. Lakshmi Narasimha have been dealt with by the Tribunal. The Tribunal is the Court of first instance and

this Court, while exercising its certiorari jurisdiction under Article 226 of the Constitution of India, does not sit in appeal over orders passed by the Tribunal. Since none of the contentions now urged before us have been dealt with by the Tribunal and in as much as the sole ground on which the interim order was made absolute was the fact that the seniority list dated 01.03.2005 had been suspended in the other batch of O.As, which now stands revived in view of the orders passed on 09.11.2006 in the other batch of O.As, the order of the Tribunal in V.M.A. No. 1060 of 2005 is set aside and the Tribunal is directed to hear the V.M.A. No. 1060 of 2005 afresh, in accordance with law, as expeditiously as possible, in any event not later than four weeks from the date of receipt of the copy of the order.

Subject to the above directions, the writ petition stands disposed of. No costs.

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B.PRAKASH RAO,J

Date: 20-11-2006

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RAMESH RANGANATHAN,J

MRKR